

AMENDED IN SENATE JUNE 29, 2002

AMENDED IN ASSEMBLY APRIL 25, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2216

Introduced by Assembly Member Keeley
(~~Coauthor: Assembly Member Nation~~)
(Coauthors: Assembly Members Koretz and Nation)
(Coauthor: Senator Escutia)

February 20, 2002

An act to amend Sections 6401 and 6402 of the Probate Code, relating to intestate succession.

LEGISLATIVE COUNSEL'S DIGEST

AB 2216, as amended, Keeley. Intestate succession: domestic partners.

Under the existing law of intestate succession, the surviving spouse is entitled to a specified share of the decedent's separate property that is not effectively disposed of by will.

Effective July 1, 2003, this bill would extend this entitlement to a decedent's domestic partner, as specified. This bill would also make conforming and technical changes. The bill would further require the Secretary of State to send to each registered domestic partner who registered prior to January 1, 2003, a letter describing changes in the law of intestate succession proposed by this bill and the implication of those changes for domestic partners. The bill would require the Secretary of State to provide a similar notice with all requests for a Declaration of

Domestic Partnership form on and after January 1, 2003, and to make that notice available on the Internet.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6401 of the Probate Code is amended to
2 read:

3 6401. (a) As to community property, the intestate share of the
4 surviving spouse is the one-half of the community property that
5 belongs to the decedent under Section 100.

6 (b) As to quasi-community property, the intestate share of the
7 surviving spouse is the one-half of the quasi-community property
8 that belongs to the decedent under Section 101.

9 (c) As to separate property, the intestate share of the surviving
10 spouse or ~~domestic partner, as defined in Section 297 of the Family~~
11 ~~Code~~ *surviving domestic partner, as defined in subdivision (b) of*
12 *Section 37*, is as follows:

13 (1) The entire intestate estate if the decedent did not leave any
14 surviving issue, parent, brother, sister, or issue of a deceased
15 brother or sister.

16 (2) One-half of the intestate estate in the following cases:

17 (A) Where the decedent leaves only one child or the issue of
18 one deceased child.

19 (B) Where the decedent leaves no issue but leaves a parent or
20 parents or their issue or the issue of either of them.

21 (3) One-third of the intestate estate in the following cases:

22 (A) Where the decedent leaves more than one child.

23 (B) Where the decedent leaves one child and the issue of one
24 or more deceased children.

25 (C) Where the decedent leaves issue of two or more deceased
26 children.

27 SEC. 2. Section 6402 of the Probate Code is amended to read:

28 6402. Except as provided in Section 6402.5, the part of the
29 intestate estate not passing to the surviving spouse or ~~domestic~~
30 ~~partner, as defined in Section 297 of the Family Code~~ *surviving*
31 *domestic partner, as defined in subdivision (b) of Section 37*, under
32 Section 6401, or the entire intestate estate if there is no surviving
33 spouse or domestic partner, passes as follows:

1 (a) To the issue of the decedent, the issue taking equally if they
2 are all of the same degree of kinship to the decedent, but if of
3 unequal degree those of more remote degree take in the manner
4 provided in Section 240.

5 (b) If there is no surviving issue, to the decedent's parent or
6 parents equally.

7 (c) If there is no surviving issue or parent, to the issue of the
8 parents or either of them, the issue taking equally if they are all of
9 the same degree of kinship to the decedent, but if of unequal degree
10 those of more remote degree take in the manner provided in
11 Section 240.

12 (d) If there is no surviving issue, parent or issue of a parent, but
13 the decedent is survived by one or more grandparents or issue of
14 grandparents, to the grandparent or grandparents equally, or to the
15 issue of those grandparents if there is no surviving grandparent, the
16 issue taking equally if they are all of the same degree of kinship to
17 the decedent, but if of unequal degree those of more remote degree
18 take in the manner provided in Section 240.

19 (e) If there is no surviving issue, parent or issue of a parent,
20 grandparent or issue of a grandparent, but the decedent is survived
21 by the issue of a predeceased spouse, to that issue, the issue taking
22 equally if they are all of the same degree of kinship to the
23 predeceased spouse, but if of unequal degree those of more remote
24 degree take in the manner provided in Section 240.

25 (f) If there is no surviving issue, parent or issue of a parent,
26 grandparent or issue of a grandparent, or issue of a predeceased
27 spouse, but the decedent is survived by next of kin, to the next of
28 kin in equal degree, but where there are two or more collateral
29 kindred in equal degree who claim through different ancestors,
30 those who claim through the nearest ancestor are preferred to those
31 claiming through an ancestor more remote.

32 (g) If there is no surviving next of kin of the decedent and no
33 surviving issue of a predeceased spouse of the decedent, but the
34 decedent is survived by the parents of a predeceased spouse or the
35 issue of those parents, to the parent or parents equally, or to the
36 issue of those parents if both are deceased, the issue taking equally
37 if they are all of the same degree of kinship to the predeceased
38 spouse, but if of unequal degree those of more remote degree take
39 in the manner provided in Section 240.

SEC. 3. (a) On or before March 1, 2003, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered prior to January 1, 2003:

“Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

As of July 1, 2003, California’s law of intestate succession will change. The intestate succession law specifies what happens to a person’s property when that person dies without a will, trust, or other estate plan.

Under existing law, if a domestic partner dies without a will, trust, or other estate plan, a surviving domestic partner cannot inherit any of the deceased partner’s separate property. Instead, surviving relatives, including, for example, children, brothers, sisters, nieces, nephews, or parents may inherit the deceased partner’s separate property.

Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner’s separate property in the same manner as a *surviving* spouse. This change will mean that the surviving domestic partner would inherit a third, a half, or all of the deceased partner’s separate property, depending on whether the deceased domestic partner has surviving children or other relatives. This change does not affect any community or quasi-community property that the deceased partner may have had.

This change in the intestate succession law will not affect you if you have a will, trust, or other estate plan.

If you do not have a will, trust, or other estate plan and you do not wish to have your domestic partner inherit your separate property in the manner provided by the revised law, you may prepare a will, trust, or other estate plan, or terminate your domestic partnership.

~~If your domestic partnership has terminated, it is important that you notify the Secretary of State by filing a Notice of Termination of Domestic Partnership. If you do not file that notice, your former domestic partner may inherit under the new law. You can obtain a Notice of Termination of Domestic Partnership from the Secretary of State’s office.~~

1 Under existing law, your domestic partnership is automatically
2 terminated if you or your partner married or died while you were
3 registered as domestic partners. It is also terminated by you
4 sending your partner or your partner sending to you by certified
5 mail a notice terminating the domestic partnership, or by you and
6 your partner no longer sharing a common residence. In all cases,
7 you are required to file a Notice of Termination of Domestic
8 Partnership with the Secretary of State in order to establish the
9 actual date of termination of the domestic partnership. You can
10 obtain a Notice of Termination of Domestic Partnership from the
11 Secretary of State's office.

12 If your domestic partnership has terminated because you sent
13 your partner or your partner sent to you a notice of termination of
14 your domestic partnership, you must immediately file a Notice of
15 Termination of Domestic Partnership. If you do not file that notice,
16 your former domestic partner may inherit under the new law.
17 However, if your domestic partnership has terminated because you
18 or your partner married or you and your partner no longer share
19 a common residence, neither you nor your former partner may
20 inherit from the other under this new law.

21 If you have any questions about this change, please consult an
22 ~~estate-planning~~ estate planning attorney. If you cannot find an
23 ~~estate-planning~~ estate planning attorney in your locale, please
24 contact your county bar association for a referral.

25
26
27 Sincerely,

28
29 The Secretary of State”
30

31 (b) Beginning on January 1, 2003, the Secretary of State shall
32 provide the following notice with all requests for the Declaration
33 of Domestic Partnership form. The Secretary of State shall also
34 attach the notice to the Declaration of Domestic Partnership form
35 that is provided to the general public on the Secretary of State's
36 Web site:
37

1 “NOTICE TO POTENTIAL DOMESTIC PARTNER
2 REGISTRANTS
3

4 As of July 1, 2003, California’s law of intestate succession will
5 change. The intestate succession law specifies what happens to a
6 person’s property when that person dies without a will, trust, or
7 other estate plan.

8 Under the law prior to July 1, 2003, if a domestic partner dies
9 without a will, trust, or other estate plan, a surviving domestic
10 partner cannot inherit any of the deceased partner’s separate
11 property. Instead, surviving relatives, including, for example,
12 children, brothers, sisters, nieces, nephews, or parents may inherit
13 the deceased partner’s separate property.

14 Under the law to take effect July 1, 2003, if a domestic partner
15 dies without a will, trust, or other estate plan, the surviving
16 domestic partner will inherit the deceased partner’s separate
17 property in the same manner as a *surviving* spouse. This change
18 will mean that the surviving domestic partner would inherit a third,
19 a half, or all of the deceased partner’s separate property, depending
20 on whether the deceased domestic partner has surviving children
21 or other relatives. This change does not affect any community or
22 quasi-community property that the deceased partner may have
23 had.

24 This change in the intestate succession law will not affect you
25 if you have a will, trust, or other estate plan.

26 If you do not have a will, trust, or other estate plan, and you do
27 not wish to have your domestic partner inherit your separate
28 property in the manner provided by the revised law, you may
29 prepare a will, trust, or other estate plan, or terminate your
30 domestic partnership.

31 ~~If your domestic partnership has terminated, it is important that~~
32 ~~you notify the Secretary of State by filing a Notice of Termination~~
33 ~~of Domestic Partnership. If you do not file that notice, your former~~
34 ~~domestic partner may inherit under the new law. You can obtain~~
35 ~~a Notice of Termination of Domestic Partnership from the~~
36 ~~Secretary of State’s office.~~

37 *Under existing law, your domestic partnership is automatically*
38 *terminated if you or your partner married or died while you were*
39 *registered as domestic partners. It is also terminated by you*
40 *sending your partner or your partner sending to you by certified*

1 mail a notice terminating the domestic partnership, or by you and
2 your partner no longer sharing a common residence. In all cases,
3 you are required to file a Notice of Termination of Domestic
4 Partnership with the Secretary of State in order to establish the
5 actual date of termination of the domestic partnership. You can
6 obtain a Notice of Termination of Domestic Partnership from the
7 Secretary of State's office.

8 If your domestic partnership has terminated because you sent
9 your partner or your partner sent to you a notice termination of
10 your domestic partnership, you must immediately file a Notice of
11 Termination of Domestic Partnership. If you do not file that notice,
12 your former domestic partner may inherit under the new law.
13 However, if your domestic partnership has terminated because you
14 or your partner married or you and your partner no longer share
15 a common residence, neither you nor your former partner may
16 inherit from the other under this new law.

17 If you have any questions about this change, please consult an
18 ~~estate-planning~~ estate planning attorney. If you cannot find an
19 ~~estate-planning~~ estate planning attorney in your locale, please
20 contact your county bar association for a referral.”

21 SEC. 4. The provisions of Sections 1 and 2 of this act shall
22 become operative on July 1, 2003.

